

**KANE LAW FIRM**  
Brad S. Kane (SBN 151547)  
[bkane@kanelaw.la](mailto:bkane@kanelaw.la)  
Eric Clopper (SBN 346031)  
[eclopper@kanelaw.la](mailto:eclopper@kanelaw.la)  
1154 S. Crescent Heights. Blvd.  
Los Angeles, CA 90035  
Tel: (323) 697-9840  
Fax: (323) 571-3579

Attorneys for Defendants  
VXN GROUP LLC; STRIKE 3 HOLDINGS, LLC;  
GENERAL MEDIA SYSTEMS, LLC; and  
MIKE MILLER

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION**

MACKENZIE ANNE THOMA,  
a.k.a. KENZIE ANNE, an  
individual and on behalf of all  
others similarly situated,

**Plaintiff,**

V.

VXN GROUP LLC, a Delaware limited liability company; STRIKE 3 HOLDINGS, LLC, a Delaware limited liability company; GENERAL MEDIA SYSTEMS, LLC, a Delaware limited liability company; MIKE MILLER, an individual; and DOES 1 to 100, inclusive.

## Defendants.

Case No. 2:23-cv-04901 WLH (AGRx)

**STRIKE 3 HOLDINGS, LLC'S,  
GENERAL MEDIA SYSTEMS, LLC's,  
AND MIKE MILLER'S REPLY BRIEF  
IN SUPPORT OF DEFENDANTS'  
SPECIAL MOTION TO STRIKE  
(ANTI-SLAPP) PURSUANT TO C.C.P.  
§ 425.16**

Date: January 5, 2024  
Time: 11:30 a.m. or later  
Courtroom: 9B

[Filed concurrently with Request for Judicial Notice; and Opposition to Plaintiff's Request for Judicial Notice and Objection to the Declaration of Sarah Cohen]

Complaint Filed: April 20, 2023  
Removed: June 21, 2023

## TABLE OF CONTENTS

<b>TABLE OF CONTENTS .....</b>	<b>i</b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>I. DEFENDANTS' MOTION IS TIMELY .....</b>	<b>2</b>
<b>II. THE ANTI-SLAPP'S "SOLELY IN THE PUBLIC INTEREST" EXEMPTION DOES NOT APPLY TO THE CREATION AND DISSEMINATION OF MOTION PICTURES.....</b>	<b>3</b>
<b>III. DEFENDANTS' MOTION SHOULD BE GRANTED.....</b>	<b>4</b>
A. Defendants' Activity and Not Plaintiff's Cause of Action Controls the Court's Analysis.....	4
B. The Only Allegations Against Miller and Strike 3 Arise from Protected Activity.	
7	
C. Plaintiff Fails to Demonstrate a Probability of Prevailing on the Merits .....	8
1. Plaintiff Fails to Demonstrate a Probability of Prevailing against Miller.....	8
2. Plaintiff Fails to Demonstrate a Probability of Prevailing against Strike 3 and GMS.....	12
<b>IV. CONCLUSION.....</b>	<b>14</b>

## **TABLE OF AUTHORITIES**

Cases

4	<i>Baral v. Schnitt</i> , 1 Cal. 5th 376, 396 (2016) .....	6
5	<i>Carter v. Raisier-CA, LLC</i> , 2017 WL 4098858, at *5 (N.D. Sept.	
6	15, 2017) .....	9
7	<i>City of Cotati v. Cashman (“Cotati”)</i> .....	6
8	<i>Gastelo v. Portables Choice Grp. LLC</i> , No.	
9	223CV07335CASAJRX, 2023 WL 7327433, at *6 (C.D. Cal.	
10	Nov. 6, 2023) .....	13
11	<i>Henderson v. Equilon Enterprises, LLC</i> , 40 Cal.App. 5th 1111,	
12	1120 (2019).....	13
13	<i>Hunter v. CBS Broad. Inc.</i> , 221 Cal. App. 4th 1510, 1525, (2013).....	7
14	<i>Ingels v. Westwood One Broadcasting Services, Inc.</i> , 129,	
15	Cal.App.4 <sup>th</sup> 1050, 1066 (2005) .....	3
16	<i>Jacobs v. Sustainability Partners LLC</i> , 2020 WL 5593200, at p.	
17	*13 (N.D. Cal., Sept. 18, 2020) .....	9
18	<i>Manlin v. Milner</i> , 82 Cal. App. 5th 1004, 1020 (2022).....	5
19	<i>Mattison v. Loma Linda Univ. Med. Ctr.</i> , 2023 WL 4157466, at	
20	*12 (C.D. Cal. Apr. 6, 2023).....	12
21	<i>Medina v. Equilon Enterprises, LLC</i> , 68 Cal.App.5th 868, 879	
22	(2021).....	12
23	<i>Muddy Waters, LLC v. Superior Court</i> , 62 Cal.App.5th 905, 919	
24	(2021).....	3
25	<i>Myers v. Dignity Health</i> , 44 Cal.App.5th 301, 314 .....	13
26	<i>Navellier v. Sletten</i> , 29 Cal. 4th 82, 90, (2002).....	6

1	<i>Newport Harbor Ventures, LLC v. Morris Cerullo World</i>	
2	<i>Evangelism</i> , 4 Cal.5th 637, 655 (2018).....	1
3	<i>North v. Superior Hauling &amp; Fast Transit, Inc</i> , 2019 WL	
4	8163808, at *4 (C.D. Cal. Aug. 23, 2019).....	9
5	<i>Plaksin v. NewSight Reality, Inc.</i> , No. 2:19-cv-00458-RGK-SS,	
6	2019 WL 4316255 at p. *4 (C.D. Cal., Apr. 30, 2019) .....	8
7	<i>Reynolds v. Bement</i> , 36 Cal. 4th 1075, 1090 (2005).....	10
8	<i>Rios v. Linn Star Transfer, Inc.</i> , No. 19-CV-07009-JSC, 2020	
9	WL 1677338, at *6 (N.D. Cal. Apr. 6, 2020) .....	9
10	<i>San Diegans for Open Government v. San Diego State University</i>	
11	<i>Research Foundation</i> , 13 Cal.App.5th 76, 93 (2017) .....	2
12	<i>Simmons v. Allstate Ins. Co.</i> , 92 Cal.App.4th 1068 (2001) .....	1
13	<i>Wilson v. Cable News Network</i> , 7 Cal. 5th 871, 897 (2019).....	5
14	<b>Statutes</b>	
15	CCP § 425.17(b) .....	3
16	Labor Code §558.1.....	8, 9, 11
17	CCP § 425.17(b) .....	2
18	CCP § 425.17(d)(2).....	2
19	Labor Code § 558.1.....	7
20		
21		
22		
23		
24		
25		
26		
27		
28		

1       **I. INTRODUCTION**

2                  This Court should grant the Motion for the following reasons. First, Plaintiff  
3                  incorrectly describes the Motion as “frivolous” and “sanctionable” based on CCP  
4                  § 425.17(b)’s exemption from Anti-SLAPP motions for action lawsuits in “solely  
5                  the public interest.” However, Plaintiff fails to address: (i) CCP § 425.17(d)(2)’s  
6                  express authorization of Anti-SLAPP against actions arising from the creation and  
7                  dissemination of motion pictures; and (ii) BLF’s practice of incentivizing its wage  
8                  and hour plaintiffs with monetary *enhancements* disqualifies this action from the  
9                  public interest exemption.

10                 Second, Plaintiff impermissibly cites Judge Lambert’s *reversed* factual  
11                 findings to label Strike 3— a “**copyright troll**” whose lawsuits “**smack with**  
12                 **extortion**”. [Dkt. 40, 26:15-27:27:20 (emphasis in original)] *Strike 3 Holdings,*  
13                 *LLC v. Doe*, 351 F. Supp. 3d 160 (D.D.C. 2018), *rev’d and remanded*, 964 F.3d  
14                 1203 (D.C. Cir. 2020). *See* Opposition to Plaintiff’s Request For Judicial Notice  
15                 for further discussion.

16                 Third, Plaintiff misrepresents caselaw. For example, *Newport Harbor*  
17                 *Ventures, LLC v. Morris Cerullo World Evangelism*, 4 Cal.5th 637, 655 (2018)  
18                 holds that adding new causes of action or “new allegations that make previously  
19                 pledged causes of action subject to an anti-SLAPP motion” restarts the clock for  
20                 filing an anti-SLAPP. Yet, Plaintiff pretends the quoted language does not exist.

21                 Fourth, Plaintiff rewrites the FAC’s factual allegations. For example,  
22                 Plaintiff pretends that the FAC alleges that Mike Miller was VZN’s CEO, when it  
23                 did not.

24                 Finally, Plaintiff cannot escape this Anti-SLAPP. Because removing the  
25                 FAC’s allegations of GMS’s movie distribution, Strike 3’s film ownership, and  
26

1 Miller's on set activity as a producer, director, and wardrobe specialist, Plaintiff  
2 alleges no activity that gives rise to the Anti-SLAPP Defendants' joint liability.

3 **I. DEFENDANTS' MOTION IS TIMELY**

4 Plaintiff's arguments that this Motion is untimely are meritless. First,  
5 Plaintiff incorrectly argues that "anti-SLAPP motions can only be brought in [sic]  
6 amended complaints against causes of action that have not existed in the previous  
7 complaint." **[Dkt. 40 at 9:20-22]** However, under CCP § 425.16(f), Defendants  
8 had 60 days to bring this Motion *after* Thoma added new allegations that made her  
9 previously pleaded cause of action subject to an Anti-SLAPP motion:

10 An amended complaint reopens the time to file an anti-SLAPP motion  
11 without court permission only if the amended complaint . . . adds new  
12 allegations that make previously pleaded causes of action subject to an anti-  
13 SLAPP motion.

14 *Newport Harbor Ventures, LLC v. Morris Cerullo World Evangelism*, 4 Cal.5th  
15 637, 655 (2018).

16 Second, Plaintiff incorrectly argues that this Motion is untimely because  
17 Plaintiff alleged that "VIXEN MEDIA GROUP [which includes MILLER,  
18 STRIKE 3, and GMS] is the creator of adult motion pictures and photographs  
19 distributed for commercial sale through various distribution outlets and platforms  
20 in her original complaint." **[Dkt. 40 at 10:10-14]** However, this Court dismissed  
21 the Plaintiff's original joint liability allegations as "stated in wholly conclusory  
22 terms with little or no supporting facts." **[Dkt. 23, 11:4-8]** Simply put, Plaintiff's  
23 boilerplate joint liability allegations were insufficient to demonstrate joint liability  
24 – let alone joint liability arising from protected speech.

25 More important, the FAC's *new* allegations arise from protected speech:  
26 (i) Strike 3 is liable because it owns copyrights for VXN, **[Dkt. 26, ¶ 19]**;  
27 (ii) General Media is liable because is distributes films for VXN, **[Dkt. 26, ¶ 20]**;  
28 and (iii) Miller is liable because he directs the movies and selects the talent,

1 wardrobes, and other creative decisions. [Dkt. 26, ¶¶ 12, 18] Thus, the clock began  
2 to run with the filing of the FAC.

3 Finally, if this Motion is untimely, the Court should exercise its discretion to  
4 grant permission for the filing of this Motion.

5 **II. THE ANTI-SLAPP'S "PUBLIC INTEREST" EXEMPTION DOES**  
6 **NOT APPLY TO THE CREATION AND DISSEMINATION OF**  
7 **MOTION PICTURES.**

8 While CCP § 425.17(b) exempts lawsuits “solely in the public interest” from  
9 anti-SLAPP motions, that section does not apply to “[a]ny action against any  
10 person or entity based upon the creation [and] dissemination . . . of motion  
11 pictures[.]” CCP § 425.17(d)(2). Indeed, the legislature’s express *authorization* of  
12 anti-SLAPP motions based on the creation and dissemination of motion pictures  
13 underscores that Plaintiff’s allegations against the Anti-SLAPP Defendants arise  
14 from protected activity. *San Diegans for Open Government v. San Diego State*  
15 *University Research Foundation*, 13 Cal.App.5th 76, 93 (2017) (“[R]egardless of  
16 whether the plaintiff’s action is a public interest lawsuit under section 425.17,  
17 subdivision (b), if section 425.17, subdivision (d) also applies, the defendant may  
18 bring an anti-SLAPP motion.”).

19 Significantly, Plaintiff fails to address CCP § 425.17(d)(2). Yet, Plaintiff’s  
20 FAC alleges that the Anti-SLAPP Defendants are responsible for producing,  
21 distributing, and directing adult motion pictures. [Dkt. 26, ¶ 12, 18, 19, 20]. Those  
22 admissions demonstrate that the Anti-SLAPP Defendants’ activity is exactly the  
23 type of activity the statute was designed to protect. *Est. of B.H. v. Netflix, Inc.*, No.  
24 4:21-CV-06561-YGR, 2022 WL 551701, at \*2 (N.D. Cal. Jan. 12, 2022) (“since  
25 the claims arise from the creation and dissemination of a television show, the  
26 statutory exemptions contained in Section 425.17[b] do not apply.”); *Stutzman v.*  
27 *Armstrong*, No. 2:13-CV-00116-MCE, 2013 WL 4853333, at \*9 (E.D. Cal. Sept.  
28 10, 2013) (“As the legislative history notes, these Defendants are specifically the

1 type of defendants that the Legislature sought to protect by enacting subsection  
2 (d)—“those engaged in speech-related activities.”)

3 Finally, Plaintiff fails to demonstrate that the public interest exception  
4 motions applies to this case. *Muddy Waters, LLC v. Superior Court*, 62 Cal.App.5th  
5 905, 919 (2021) (the burden of establishing an exemption set forth in section 425.17  
6 is on the plaintiff opposing the anti-SLAPP). Further, Section 425.17(b)(1) requires  
7 that “[t]he plaintiff does not seek any relief greater than or different from the relief  
8 sought for the general public or a class of which the plaintiff is a member.” *Ingels*  
9 *v. Westwood One Broadcasting Services, Inc.*, 129, Cal.App.4<sup>th</sup> 1050, 1066 (2005)  
10 (“suits motivated by personal gain are not exempted from the anti-SLAPP  
11 motion.”).

12 Here, BLF will seek an enhancement for Thoma based on its representations  
13 to other courts that: “[i]n the experience of Class Counsel, the typical enhancement  
14 award in wage and hour class actions ranges from approximately \$10,000.00 to  
15 \$25,000.00.” [Request for Judicial Notice (“RJN”), Ex. A, at 28:22-24] In fact,  
16 BLF’s wage and hour plaintiffs typically receive enhancements between \$5,000.00  
17 and \$10,000.00 [RJN, Ex. B, Ex. C, at 3:26-28]. Thus, the Court should conclude  
18 section 425.17(b) does not apply and grant this Motion.

19 **III. DEFENDANTS’ MOTION SHOULD BE GRANTED.**

20 **A. Defendants’ Activity and Not Plaintiff’s Cause of Action  
21 Controls the Court’s Analysis.**

22 Plaintiff incorrectly argues that because the underlying causes of action are  
23 wage and hour violations, all the allegations involving Defendants’ First  
24 Amendment Speech should be ignored as either incidental or merely triggering her  
25 causes of action. [Dkt. 40, 17:9-18:6]. Specifically, the Anti-SLAPP statute can be  
26 applicable to some defendants in a case and not others based on the Defendants’  
27 individual alleged activity. *Contreras v. Dowling*, 5 Cal. App. 5th 394, 407 (2016).

1 The *Contreras* court found that allegations against a defendant attorney (but not  
2 other defendants) was based on protected activity. *Id.*

3 Here, while Anti-SLAPP protection may not apply to VXN, the joint liability  
4 allegations tying the Anti-SLAPP Defendants to the causes of action against VXN  
5 are all based on protected activity. *Contreras* rejects Plaintiff's argument that the  
6 underlying causes of action, not the activity of the defendants, are the definitional  
7 focus of the Anti-SLAPP analysis. *Id.* at 409.

8 Next, Plaintiff incorrectly cites *Jordan-Benel v. Universal City Studios, Inc.*,  
9 859 F.3d 1184, 1191 (9th Cir. 2017) to argue that the Anti-SLAPP analysis is  
10 defined by the "specific act of wrongdoing." [Dkt. 40, 18:7-21] In *Jordan*, a  
11 filmmaker allegedly failed to pay for a movie concept. Because the alleged activity  
12 was failure to pay, not the actual filmmaking process, it was not based on First  
13 Amendment activity. Thus, it did not fall under the Anti-SLAPP statute. *Id.* Here,  
14 the same logic applies to VXN, who Plaintiff alleges had the obligation to pay  
15 under California labor law. However, none of the Anti-SLAPP Defendants had  
16 obligations to pay Plaintiff, *unless* Plaintiff establishes joint liability.

17 Attempting to assert joint liability, Plaintiff argues Strike 3 and GMS had  
18 "control" over VXN based on their alleged First Amendment protected activity.  
19 However, take away GMS's movie distribution, Strike 3's film ownership, and  
20 Miller's on set activity as a producer, director, and wardrobe specialist, and  
21 Plaintiff has no activity that gives rise to Defendants' liability. *See Musero v.*  
22 *Creative Artists Agency*, 72 Cal. App. 5th 802, 819, (2021) ("[W]hatever the  
23 purported 'target' of a cause of action, if protected speech activity supplies an  
24 element of the claim, the burden shifts to the plaintiff to demonstrate a reasonable  
25 probability of prevailing on the merits.")

26 Similarly, *Wilson v. Cable News Network* rejects Plaintiff's argument that  
27 the Court should look only to the cause of action and injury which are her wage  
28 and hour claims. 7 Cal. 5th 871, 897 (2019). The *Wilson* plaintiff brought a claim

1 for wrongful termination based on discrimination by CNN. *Id.* He argued, like  
2 Plaintiff here, that the First Amendment does not apply to his injury of employment  
3 discrimination. *Id.* The California Supreme Court disagreed, holding that it wasn't  
4 the discrimination (injury) that controlled, it was CNN's termination based on a  
5 violation of its policy against plagiarism. That activity was protected by the First  
6 Amendment. *Id.*

7 None of the cases cited by Plaintiff support her argument that only the cause  
8 of action matters. In *Manlin v. Milner*, the First Amendment protected activity was  
9 not the focus of the defendants' conduct because the plaintiff "could have omitted  
10 allegations regarding funding lawsuits and still state the same claim." 82 Cal. App.  
11 5th 1004, 1020 (2022). Here, without Defendants' protected activity, Plaintiff's  
12 FAC would be identical to its initial complaint, which did not survive a motion to  
13 dismiss. [Dkt. 23, 11:4-8] See *Manlin*, *Park v. Bd. of Trustees of California State*  
14 *Univ.*, 2 Cal. 5th 1057, 1063 (2017) ("Plaintiff could have omitted allegations  
15 regarding communicative acts or filing a grievance and still state the same claims.")

16 Next, *City of Cotati v. Cashman* ("Cotati") held that "the statutory phrase  
17 'cause of action ... arising from' means simply that the defendant's act underlying  
18 the plaintiff's cause of action must itself have been an act in furtherance of the right  
19 of petition or free speech." 29 Cal. 4th 69, 78 (2002). Here, Defendants' acts all  
20 arise from the movie making process.

21 *Cotati* also rejects Plaintiff's argument that an Anti-SLAPP motion may only  
22 be brought where a party's claim has the intent to chill protected activity. [Dkt. 40,  
23 8:12-14]; *Cotati*, 29 Cal. 4th at 74 ("the anti-SLAPP statute, construed in  
24 accordance with its plain language, incorporates no intent-to-chill pleading or proof  
25 requirement.")

26 Finally, Plaintiff relies heavily on *Navellier v. Sletten*, 29 Cal. 4th 82, 90,  
27 (2002) for the notion that Defendants' role in the movie making process is only  
28 "triggering" activity. However, *Navellier* reinforces that the "definitional focus"

1 of the Anti-SLAPP statute is “not the form of Plaintiff’s cause of action but rather  
2 the defendant’s activity.” *Id.* at 92. *Navellier* also holds applying the Anti-SLAPP  
3 statute would *not* allow the movie industry (or any other industry) to escape liability  
4 in wage and hour claims. It simply requires claims implicating First Amendment  
5 activity have some “minimal merit,” which Plaintiff lacks here. *Id.* at 93.

6 **B. The Only Allegations Against Miller and Strike 3 Arise from  
7 Protected Activity.**

8 The California Supreme Court rejected Plaintiff’s argument the protected  
9 speech is “incidental to the imputation of liability”: [Dkt. 40, 16:4-6]

10 When relief is sought based on allegations of both protected and unprotected  
11 activity, the unprotected activity is disregarded at this stage. If the court  
12 determines that relief is sought based on allegations arising from activity  
protected by the statute, the second step is reached.

13 *Baral v. Schnitt*, 1 Cal. 5th 376, 396 (2016).

14 Regarding Miller, Plaintiff incorrectly argues it is “his role as CEO, creator  
15 and enforcer of the same policies and procedures that caused the harm to Plaintiff”  
16 that accounts for his liability. [Dkt. 40, 16:14-17] However, the FAC does not  
17 allege that Miller is the company’s CEO. Instead, Miller is alleged to be the  
18 “Executive Director” and “Executive Producer” indicating he is involved in the  
19 moviemaking process, but not any wage and hour decisions. [Dkt. 26, ¶¶1, 6, 12].

20 Plaintiff cannot make up allegations now to support her argument. In FAC  
21 ¶18, Plaintiff alleges that Miller was responsible for policies and procedures  
22 regarding hiring and terminating professional actors, as well as their compensation.  
23 This is protected activity. *See Hunter v. CBS Broad. Inc.*, 221 Cal. App. 4th 1510,  
24 1525, (2013) (“CBS’s protected activity—employment decisions regarding its  
25 weather anchors—is not incidental to Hunter’s discrimination claims; indeed, it is  
26 the very conduct on which his claims are based.”); *see also Wilson v. Cable News*

1      *Network, Inc.*, 7 Cal.5th 871, 897, (2019) (employment termination policy  
2      regarding plagiarism held to be a protected activity).

3      Here, the only non-conclusory allegations against Strike 3 are that: (i) it is  
4      the parent company of VZN; (ii) the owner of the copyright for VZN and therefore  
5      the true owner of the films, photos, and other materials created by VZN; (iii) and  
6      that STRIKE 3 owns, distributes, and produces pornographic films, images, and  
7      materials created by VZN. [Dkt. 26 ¶¶ 13, 19] The first allegation is false. Plaintiff  
8      apparently failed to review Defendants' Rule 7.1 Disclosure Statement. [Dkt. 4]  
9      All of the other allegations are First Amendment protected activity and without  
10     them Plaintiff's joint liability allegations are insufficient as this Court previously  
11     ruled.

12     **C. Plaintiff Fails to Demonstrate a Probability of Prevailing on the  
13       Merits.**

14     Plaintiff's Opposition attempts to resuscitate the FAC's conclusory joint  
15     liability *allegations* by invoking the FAC's passing references to joint employer  
16     liability and Labor Code § 558.1. *See* FAC, at ¶¶ 12, 18, 23. However, given the  
17     FAC's factually deficient and conclusory allegations, Plaintiff fails to demonstrate  
18     a probability of succeeding on the merits. *See Woulfe*, 2022 WL 1821609, at \*2  
19     (Complaint must be "legally sufficient and supported by a sufficient *prima facie*  
20     showing of facts" to establish probability of success.)

21     **1. Plaintiff Fails to Demonstrate a Probability of Prevailing  
22       against Miller.**

23       **a) The FAC Fails to Adequately Plead Liability under  
24       Section 558.1 Against Miller.**

25       The FAC purports to impute liability on Miller by invoking section 558.1 of  
26       the Labor Code. [Dkt. 26, at ¶¶ 12, 18] Section 558.1 provides in pertinent part:  
27  
28

1       “(a) Any employer or other person acting on behalf of an employer, who  
2 violates, or causes to be violated [specified Labor Code provisions or Wage  
3 Orders] may be held liable as the employer for such violation.

4       However, section 558.1 is not a strict liability statute. To hold an “owner,  
5 director, or managing agent” liable under Section 558.1, a plaintiff must allege facts  
6 showing the individual defendant was engaged in “individual wrongdoing” in the  
7 context of the alleged violations. *See Plaksin v. NewSight Reality, Inc.*, No. 2:19-  
8 cv-00458-RGK-SS, 2019 WL 4316255 at p. \*4 (C.D. Cal., Apr. 30, 2019)  
9 (dismissing Labor Code claims against an individual defendant because  
10 “allegations pertain[ed] only to [his] role as a corporate officer,” and included no  
11 “allegation of individual wrongdoing.”) “District courts in this Circuit have  
12 dismissed claims premised on liability under Section 558.1 where plaintiffs failed  
13 to allege specific facts to establish that the individual Defendant was personally  
14 involved in the alleged violations.” *Rios v. Linn Star Transfer, Inc.*, No. 19-CV-  
15 07009-JSC, 2020 WL 1677338, at \*6 (N.D. Cal. Apr. 6, 2020) (internal quotation  
16 omitted).

17       Plaintiff cannot simply impute liability to an “owner, director, or managing  
18 agent” by virtue of their position – specific facts must be alleged that establish  
19 personal involvement in specific alleged violations. *North v. Superior Hauling &*  
20 *Fast Transit, Inc.*, 2019 WL 8163808, at \*4 (C.D. Cal. Aug. 23, 2019). *See also,*  
21 *Carter v. Raisier-CA, LLC*, 2017 WL 4098858, at \*5 (N.D. Sept. 15, 2017), aff’d,  
22 724 F. App’x 586 (9th Cir. 2018) (“Plaintiff must allege specific facts to establish  
23 that Kalanick was personally involved in the alleged violations, including  
24 withholding Plaintiff’s minimum wage and overtime compensation”); *Jacobs v.*  
25 *Sustainability Partners LLC*, 2020 WL 5593200, at \*13 (N.D. Cal., Sept. 18, 2020)  
26 (same); *Plaksin*, 2019 WL 4316255, at \*5 (C.D. Cal. Apr. 30, 2019) (same).

27       Here, the FAC summarily alleges that Miller “violated, or caused to be  
28 violated, the above-referenced and below-referenced Labor Code provisions.”

1 [Dkt. 26, at ¶ 18]. Yet, Plaintiff fails to plead any *facts* implicating Miller in any  
2 specific alleged violation. Rather, Plaintiff broadly equates Miller’s performance  
3 of routine corporate duties such as hiring and policy enforcement to liability for all  
4 of Plaintiff’s causes of action. *See Rios*, 2020 WL 1677338, at \*6 (N.D. Cal. Apr.  
5 6, 2020) (“[T]he allegations are conclusory and rely solely on the Individual  
6 Defendants’ respective positions ‘as owners, directors, officers and/or managing  
7 agents of [the employer] who violated, and/or caused to be violated, the various  
8 California wage-hour laws at issue in this case.’ That is not sufficient to survive  
9 dismissal.”)

10 Alleging that Miller violated or caused to be violated Labor Code provisions  
11 without stating in *which* violations Miller was “personally involved,” or alleging  
12 the actual nature of Miller’s involvement, is a mere legal conclusion, and in the  
13 absence of any supporting facts, that legal conclusion does not state a plausible  
14 claim for relief. *See Iqbal*, 556 U.S. at 678 (noting that dismissal is warranted where  
15 a complaint offers only “labels and conclusions or a formulaic recitation of the  
16 elements of a cause of action,” or “tenders naked assertion[s] devoid of further  
17 factual enhancement”.)

18 Here, the FAC’s factual allegations against Miller are unrelated to any  
19 alleged Labor Code violation and therefore insufficient to establish liability under  
20 Section 558.1. Indeed, the FAC’s allegations that Miller engaged in on-set  
21 producing, selected talent, directed scenes, and chose outfits (*See Dkt. 26, ¶ 12*) all  
22 implicate First Amendment rights of free speech and expression. These allegations  
23 demonstrate the necessity of Defendants’ Anti-SLAPP motion without implicating  
24 Miller in any Labor Code violation. Thus, Plaintiff cannot demonstrate a  
25 probability of prevailing against Miller pursuant to Section 558.1 for any specific  
26 claim.

KANE LAW FIRM  
1154 S. Crescent Heights Blvd.  
Los Angeles, CA 90035

b) The FAC Fails to Adequately Plead General Joint Liability and Joint Employer Liability Against Miller.

Plaintiff’s contention that Miller is liable under general joint liability theory, [Dkt. 40, at 19] fails because failures to comply with labor code provisions do not qualify as tortious conduct. *Reynolds v. Bement*, 36 Cal. 4th 1075, 1090 (2005) (abrogated by *Martinez v. Combs*, 49 Cal. 4th 35 (2010) on separate grounds). Further, “Plaintiff’s boilerplate allegations of conspiracy do not alter the situation” because corporate directors cannot “conspire with their employer where they act in their official capacities on behalf of the corporation and not as individuals for their individual advantage.” *Id.* (internal quotations omitted). Here, the FAC does not allege that Miller acted outside his corporate role. Thus, there is no basis to impose vicarious liability. “Under such circumstances, California courts have declined to allow actions such as this one to proceed.” *Id.*

14 Plaintiff’s attempt to establish joint employer liability against Miller  
15 likewise fails because the FAC’s factual allegations do not demonstrate that Miller  
16 “took particular action” with regard to Plaintiff “such that [Miller] could be said to  
17 have suffered or permitted Plaintiff to work or to have engaged [her] or exercised  
18 control over [her] work.” *North*, 2019 WL 8163808, at \*6 (C.D. Cal. Aug. 23,  
19 2019). Here, Plaintiff merely alleges that Miller is an officer of VXN and imputes  
20 liability because he performed routine executive functions. Without more, “this  
21 does not suffice to establish an inference that [Miller] is an IWC Wage Order  
22 ‘employer.’” *Id.*

c) The FAC Fails to Adequately Plead Alter Ego Liability Against Miller.

25 Plaintiff correctly asserts that “[w]hether a party is an alter ego is a question  
26 of fact[,]” citing *Leek v. Cooper*, 194 Cal.App.4th 399, 418 (2011). [Dkt. 40, 21:20-  
27 21]. However, *Leek* confirms that “[t]o recover on an alter ego theory, a

1 plaintiff...must allege sufficient facts to show a unity of interest and ownership,  
2 and an unjust result if the corporation is treated as the sole actor." *Leek* at 415. In  
3 *Leek*, allegations that an individual defendant "own[ed] all of the corporate stock  
4 and ma[de] all of the management decisions [was] insufficient to cause the court to  
5 disregard the corporate entity." *Id.*

6 Similarly, here, the FAC's boilerplate alter ego allegations, combined with  
7 assertions of Miller's authority as an officer of VZN fail to "show[] a unity of  
8 interest and inequitable result from treatment of the corporation as the sole actor."  
9 *Id.* Though Plaintiff claims that it would be "premature to determine whether alter-  
10 ego liability *actually applies*" [Dkt. 40, 21:27-28], where alter ego theory is not  
11 adequately pleaded, an alter ego defendant has no burden to "adduce evidence to  
12 negate an alter ego theory[.]" *Leek* at 416.

13 Since Plaintiff's FAC does not contain factual allegations demonstrating  
14 Miller's liability (i) under Section 558.1; (ii) as a joint employer; or (iii) as an  
15 indispensable alter-ego, Plaintiff cannot demonstrate a probability of success on  
16 the merits. Thus, the Court should grant the Motion and dismiss Miller.

17 **2. Plaintiff Fails to Demonstrate a Probability of Prevailing**  
18 **against Strike 3 and GMS.**

19 **a) The FAC Fails to Adequately Plead Joint Employer**  
20 **Liability Against Strike 3 and GMS.**

21 Plaintiff is correct that a joint employer relationship may be demonstrated  
22 by indirect control of the primary employer. [Dkt. 40, 19:22-28] However, the FAC  
23 fails to substantively plead that Strike 3 and GMS "exercise[] enough control" to  
24 "indirectly dictate the wages, hours, or working conditions of" Plaintiff. *Medina*  
25 v. *Equilon Enterprises, LLC*, 68 Cal.App.5th 868, 879 (2021).

26 The *Medina* court found a joint employer relationship between a gas station  
27 owner and separate operators where: (i) the owner mandated operating hours;

1 (ii) deviation from the owner's policies were prohibited; and (iii) violation of the  
2 owner's policies was a fireable offense. *See Mattison v. Loma Linda Univ. Med.*  
3 *Ctr.*, 2023 WL 4157466, at \*12 (C.D. Cal. Apr. 6, 2023) (summarizing *Medina*).  
4 Here, Plaintiff summarily claims that Strike 3, by operating as a copyright holding  
5 company, and GMS, by operating as a film distributor, exert control over VXN.  
6 [Dkt. 40, at pp. 20-21].

7 As with Miller, these allegations demonstrate the necessity of Defendants'  
8 Anti-SLAPP Motion, rather than showing that Strike 3 or GMS *indirectly* dictated  
9 Plaintiff's wages, hours, or working conditions. *See Henderson v. Equilon*  
10 *Enterprises, LLC*, 40 Cal.App. 5th 1111, 1120 (2019) ("While Shell exercised  
11 control over ARS, and ARS exercised control over the plaintiff, the plaintiff did  
12 not explain how Shell exercised control over her own working conditions.").

13 Plaintiff argues that without Strike 3 to manage its copyrights and without  
14 GMS to distribute its films, VXN would be unable to operate, [FAC, ¶ 20], but the  
15 mere fact VXN engages with separate entities to distribute its films and manage its  
16 intellectual property does not substantiate Plaintiff's joint employer liability theory.  
17 *See St. Myers v. Dignity Health*, 44 Cal.App.5th 301, 314 ("[A] medical clinic  
18 needs power and water to operate, but that does not make utility companies 'health  
19 facilities' under the statute.").

20 b) The FAC Fails to Adequately Plead Alter Ego Liability  
21 Against Strike 3 and GMS.

22 Plaintiff's alter-ego allegations against Strike 3 and GMS suffer from the  
23 same deficiencies as those against Miller. Namely, the FAC fails to allege sufficient  
24 facts showing (i) unity of interest; and (ii) an inequitable result absent the joinder  
25 of Strike 3 and GMS. Because the FAC's alter ego allegations are factually  
26 deficient and conclusory, Strike 3 and GMS need not adduce evidence to the  
27 contrary. *Leek*, 194 Cal.App.4th 399, 416. Further, the FAC fails to demonstrate  
28

1 prejudice in the absence of their joinder. *See Gastelo v. Portables Choice Grp. LLC*,  
2 No. 223CV07335CASAJRX, 2023 WL 7327433, at \*6 (C.D. Cal. Nov. 6, 2023)  
3 (prejudice only exists if a proposed defendant is “crucial to the case.”) Accordingly,  
4 Plaintiff cannot demonstrate a likelihood of prevailing on the merits against Strike  
5 and GMS on the basis of either alter ego or joint employer theories of liability.  
6 Thus, this Court should grant the Motion and dismiss Strike 3 and GMS.

7 **IV. CONCLUSION**

8 For the foregoing reasons, the Anti-SLAPP Defendants request the Court  
9 grant this Motion.

10  
11 Dated: December 22, 2023

Respectfully submitted,

12 KANE LAW FIRM

13 By: /s/ Brad S. Kane

14 Brad Kane

15 Eric Clopper

16 Attorneys for Defendants

17 VZN Group LLC; Strike 3 Holdings,  
LLC; General Media Systems, LLC;  
and Mike Miller

1

## CERTIFICATE OF COMPLIANCE

3 The undersigned, counsel of record for Defendants, certifies that this brief  
4 contains 4,000 words, which complies with L.R. 11-6.1, and this Court's Standing  
Order on word limits for Motions.

Dated: December 22, 2023

By: /s/ Brad S. Kane  
Brad Kane

10

11

12

## CERTIFICATE OF SERVICE

I, Brad S. Kane, hereby certify that this document has been filed on December 22, 2023, through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing.

16 | Dated: December 22, 2023

By: /s/ Brad S. Kane  
Brad Kane

18

10

20

21

22

23

24

25

20

7

20